



Digitally signed by
Kathryn Ross
Date: 2017.12.15
08:29:48 -05'00'

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Honorable Josh Hawley,)
Attorney General of Missouri;) MUR 7267
Hawley for Missouri; and)
Doug Russell,)
in his official capacity as Treasurer)

RESPONSE TO THE SUPPLEMENTAL COMPLAINT

Through counsel, Josh Hawley, Attorney General of Missouri, Hawley for Missouri, and Doug Russell, in his official capacity as Treasurer (collectively, "Respondents"), provide the following response to the supplemental complaint filed by American Democracy Legal Fund ("Complainant") in the matter designated by the Commission as MUR 7267.

Complainant, whose assertions were already lacking, continues to make spurious allegations and conclusory statements that do nothing to bolster his original complaint in any meaningful way. In Complainant's mind, Hawley for Missouri must cease all operations, cancel all contracts, and spend zero dollars the moment Attorney General Hawley so much as contemplated a federal candidacy. This is ludicrous: it is detached from reality and has no basis under the law. Simply, the \$18,516 in expenditures that Hawley for Missouri reported on its October report to the Missouri Ethics Commission ("MEC") were for activities associated with *that* committee's legal obligation to pay for nonfederal services provided to it. The payments have nothing to do with Mr. Hawley's federal candidacy.

I. BACKGROUND

As stated in Respondent's prior response, Attorney General Josh Hawley filed a Statement of Candidacy with the Commission on August 2, 2017. Prior to that, he began contemplating a federal candidacy during the latter half of July 2017; and prior to that, he was engaged in official actions and re-election efforts as Attorney General of Missouri. Throughout this time, at no point were any funds from Hawley for Missouri used to promote a federal candidacy or for federal testing-the-waters activities. This remains true of the \$18,516 in expenditures that Complainant has seized on in the supplemental complaint.

T | 202.417.3529

🐦 | @GoberGroup

F | 877.437.5755

🌐 | GoberGroup.com

II. LEGAL ANALYSIS

The Complainant once again alleges that Respondents violated FECA by using nonfederal funds for testing-the-waters activities,¹ but Complainant wrongly asserts that Hawley for Missouri's payments to five vendors (each reported on the October report to the MEC) represent payments for federal testing-the-waters activities. They do not; rather, all the payments identified by the Complainant were for services provided by those vendors for activities not undertaken either to promote Mr. Hawley's federal candidacy or to test its viability.

Commission regulations provide that testing-the-waters activities include, but are not limited to, polling, making telephone calls, and travel.² Examples of activities that indicate that an individual has decided to become a candidate—and thus, are excluded from testing-the-waters activities—include, but are not limited to, advertising to publicize an intention to campaign for federal office, raising excess funds or undertaking activities to amass funds for a potential candidacy, and making or authorizing statements that reference the individual as a candidate.³ The regulations also state that only federally permissible funds may be used for testing-the-waters activities.⁴

Commission regulations also expressly provide that a federal candidate may engage in both a federal candidacy (or testing-the-waters activities) and a non-federal candidacy.⁵ As the Commission has stated, "Such candidates may raise and spend non-Federal funds for their State campaign, as long as their activities are consistent with State law and refer only to their status as a State or local candidate, to other candidates for that same office, or both."⁶

Complainant provides no evidence that the \$18,516 in expenditures to the five vendors pertain to any federal activities. In fact, Complainant presumably has no clue what the payments were for; instead, he only makes a conclusory assertion that making any payments to these vendors is, in and of itself, a violation. Complainant conveniently fails to

¹ Respondents concede that federal testing-the-waters activities, if they are in fact conducted, must be paid for with federally permissible funds.

² 11 C.F.R. § 100.72(a).

³ 11 C.F.R. § 100.72(b).

⁴ 11 C.F.R. § 100.72(a).

⁵ 11 C.F.R. § 300.63. As stated before, prior to becoming a federal candidate, Attorney General Hawley was actively engaged in seeking reelection. *See* Hawley for Missouri, MEC Statement of Committee Organization – Amended (filed Mar. 27, 2017).

⁶ Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule, 67 Fed. Reg. 490064, 49107 (Jul. 29, 2002).

acknowledge that Hawley for Missouri may make payments for state campaign and official Missouri activities under Commission regulations.⁷

Further, Complainant says that Respondents are “no longer even trying to cover [their] tracks”⁸ because payments were made to several vendors by both Respondents and Mr. Hawley’s federal authorized committee. This is laughable. What is more likely: (i) that Hawley for Missouri paid vendors for nonfederal activities while Mr. Hawley’s federal committee paid them for federal activities; or (ii) that Mr. Hawley’s federal committee paid vendors for federal activities, and then—for some unadvisable reason—Hawley for Missouri paid the same vendors for \$18,516 worth of federal activities at the same time? Obviously, only the former makes sense and is indeed what happened.⁹ On these points, it should be noted that for the Commission to find reason to believe a violation has occurred, a complainant must recite “facts which describe a violation of a statute or regulation.”¹⁰ Here, the Complainant has failed at this elementary task: That a state campaign committee paid vendors is not a fact that describes any violations.

Below are brief descriptions of the payments Complainant has identified in his supplemental complaint:

- OnMessage, Inc: Hawley for Missouri paid a contractually obligated \$4,850 monthly fee as a digital maintenance budget related to Mr. Hawley’s initiatives and lawsuits in his official capacity as Attorney General of Missouri. Notably, OnMessage, Inc. ceased billing Hawley for Missouri this monthly fee as soon as Mr. Hawley first began contemplating a federal candidacy during the latter half of July 2017. The funds were not used to promote Mr. Hawley’s federal candidacy or to test its viability.
- The KAM Company: Hawley for Missouri paid a contractually obligated \$3,700 for a monthly finance consulting retainer and a commission on state funds raised prior to Mr. Hawley becoming a federal candidate. Notably, the funds raised in connection with this agreement were deposited into Hawley for Missouri’s campaign account, not Josh Hawley for Senate or any other federal campaign account. The funds were not used to promote Mr. Hawley’s federal candidacy or to test its viability.

⁷ *Id.*

⁸ MUR 7267 (Hawley), Supplemental Complaint at 4.

⁹ One only needs to look at the FEC Report of Mr. Hawley’s federal committee to see it had \$782,436.00 cash-on-hand at the end of September 2017. That is obviously well more than needed to pay \$18,000 in vendor expenses if they were for federal activities. Frankly, in light of this fact, Complainant’s assertion makes no sense.

¹⁰ 11 C.F.R. § 111.4(d)(3).

- Mine Creek Strategies: Hawley for Missouri paid \$3,000 for a contractually obligated monthly political consulting retainer related to Mr. Hawley's state political activities, such as fielding scheduling requests from local Republican groups and other third parties, prior to Mr. Hawley becoming a federal candidate. The funds were not used to promote Mr. Hawley's federal candidacy or to test its viability.
- Williams-Keepers LLC: Hawley for Missouri paid \$1,787.25 for ongoing accounting services provided to the committee. The funds were not used to promote Mr. Hawley's federal candidacy or to test its viability.
- The Gober Group PLLC: Hawley for Missouri paid \$5,719.50 for ongoing legal services provided to the committee. The funds were not used to promote Mr. Hawley's federal candidacy or to test its viability.

III. CONCLUSION

Complainant takes much issue with Mr. Hawley's employ of vendors in 2017. Complainant cites no specific activity undertaken by the five consultants listed on the MEC report, and certainly none indicative of any federal campaign or testing-the-waters activities. To be clear, the \$18,516 in expenditures to the five vendors were payments for services under contract for nonfederal activity. Complainant has provided no evidence that Respondents' activities are not "consistent with State law" or do not "refer only to their status as a State or local candidate, to other candidates for that same office, or both."¹¹

While FECA prohibits the use of nonfederal funds for testing-the-waters activities, it does not ban the use of nonfederal funds for state campaign activity by an individual.¹² Mr. Hawley engaged in state campaign activities in early 2017 and was still paying for those, along with ongoing operating expenses for legal and accounting services, during the applicable reporting period. When he began testing the waters for a federal candidacy in July 2017, he established a federal committee and used federal funds from that committee to pay for all federal activity. This was shown on the federal committee's October 2017 report to the Commission. This being the case, there is no reason to believe Mr. Hawley violated FECA or Commission regulations by using nonfederal funds on testing-the-waters activities.

Respondents have fully complied with FECA and Commission regulations. The Commission should recognize that Complainant has offered nothing more than spurious allegations and conclusory statements and find no reason to believe that a violation has occurred in relation to the facts.

¹¹ Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule, 67 Fed. Reg. 490064, 49107 (Jul. 29, 2002).

¹² 11 C.F.R. § 300.63.

MUR 7267 (Hawley)
December 14, 2017
Page 5 of 5

Sincerely,

A handwritten signature in black ink, appearing to read "Chris K. Gober", with a long horizontal flourish extending to the right.

Chris K. Gober
Troy A. McCurry
Counsel to Josh Hawley, Attorney General of Missouri, Hawley for Missouri, and Doug
Russell, in his official capacity as Treasurer

199044417311